

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

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OCT 01 2012

MICHAEL TYRONE McCULLON,

Plaintiff,

v.

THOMAS BROUSE, et al.,

Defendants.

PER

M. G. S.  
DEPUTY CLERK

Civil Action No. 3:10-CV-1541

(Judge Kosik)

**MEMORANDUM AND ORDER**

AND NOW, THIS 1<sup>st</sup> DAY OF OCTOBER, 2012, IT APPEARING TO THE  
COURT THAT:

(1) Plaintiff, Michael Tyrone McCullon, an inmate confined at the United States Penitentiary, Lewisburg, Pennsylvania, filed the instant civil rights action on July 27, 2010, based on incidents which occurred beginning on August 19, 2009, involving an altercation between Plaintiff and a corrections officer;

(2) The action was assigned to Magistrate Judge Martin C. Carlson for Report and Recommendation;

(3) On September 7, 2012, the Magistrate Judge issued a very thorough Report and Recommendation (Doc. 171) where in he recommended that Defendants' Motion for Summary Judgment (Doc. 113) be granted, and Plaintiff's Motions for Summary Judgment (Docs. 124, 136, 152) be denied;

(4) Specifically, the Magistrate Judge found that Defendants were entitled to summary judgment on the excessive force claims and on the deliberate indifference claims based on the videotape of the incidents and the medical reports. Moreover, the Magistrate Judge concluded that the Defendants were entitled to qualified immunity under the circumstances.

(5) Petitioner has failed to timely file objections to the Magistrate Judge's Report and Recommendation;


AND, IT FURTHER APPEARING THAT:

(6) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C.A. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987);

(7) We have considered the Magistrate Judge's Report and we concur with his recommendations. The videotape of the incident of August 19, 2009, as well as the medical records, belie Plaintiff's Eighth Amendment excessive force and deliberate indifference claims. Based on the record before us, we find no issues of material fact arising out of the Defendants' conduct. Therefore, the Defendants' Motion for Summary Judgment will be granted.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- (1) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated September 7, 2012 (Doc. 171) is **ADOPTED**;
- (2) Defendants' Motion for Summary Judgment (Doc. 113) is **GRANTED**;
- (3) Plaintiff's Motions for Summary Judgment (Docs. 124, 136, 152) are **DENIED**;
- (4) Judgment is hereby entered in favor of the Defendants and against Plaintiff; and
- (5) The Clerk of Court is directed to **CLOSE** the case and to **FORWARD** a copy of the Memorandum and Order to the Magistrate Judge.

  
Edwin M. Kosik  
United States District Judge